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10 and E. ALLEN, M.D.

11 UNITED STATES DISTRICT COURT
12 NORTHERN DISTRICT OF CALIFORNIA
13 SAN FRANCISCO DIVISION

14 THOMAS FLOYD BRISSETTE, SR.,

15 Plaintiff,

16 v.
17 ALAMEIDA, ET AL.,
18 Defendants.

**SUBSEQUENT JOINT CASE
MANAGEMENT STATEMENT
AND STIPULATED REQUEST FOR
ORDER EXTENDING FACT
DISCOVERY CUT-OFF AND
CONTINUING CONFERENCE TO
FEBRUARY 2006**

19 Date: December 20, 2005
20 Time: 9:00 a.m.
21 Courtroom: 6
22 Trial Date: Not set.

23 The Honorable Vaughn R. Walker

24 The parties to the above-entitled action jointly submit this Subsequent Case
25 Management Statement and Stipulation requesting an order extending the fact discovery
26 cut-off by approximately two months, from December 29, 2005 to February 28, 2006, and
27 continuing the upcoming conference from December 20, 2005 to late-February 2006.

28 Although the parties have completed most of their fact discovery, recent events

1 beyond the parties' control (Plaintiff's serious illness and a witness's military commitment)
2 have delayed the scheduling of two vital depositions. Additionally, the medical staff at
3 Pelican Bay State Prison has scheduled a sleep study for Plaintiff on December 12, 2005,
4 for purposes of evaluating his alleged narcolepsy condition. Since the central issue in the
5 case concerns Defendants' alleged failure to provide narcolepsy medication to Plaintiff, the
6 parties believe outstanding fact discovery should be postponed pending the results of the
7 sleep study. That testing may also necessitate the deposition of the non-party doctor who
8 renders the diagnosis.

9 **I. BACKGROUND AND PROCEDURAL STATUS**

10 **A. Case Overview**

11 This is a prisoner's civil rights action brought under 42 U.S.C. § 1983, in which
12 Plaintiff alleges deliberate indifference to his serious medical needs. In particular, Plaintiff
13 claims that he suffers from narcolepsy, and that Defendants unjustifiably have prevented
14 Plaintiff from receiving medication (or other treatment) for the condition since August
15 2000. Defendants deny liability on the grounds that Plaintiff's narcolepsy diagnosis is
16 questionable.

17 **B. Fact Discovery Completed To Date**

18 Pursuant to case management deadlines previously set by the Court, the parties
19 exchanged initial disclosures on August 12, 2005, and in September 2005, completed the
20 depositions of both Defendants (Drs. Allen and Winslow) and Dr. Douglas. Defendants
21 have also responded to Plaintiff's document requests, interrogatories and requests for
22 admissions, and have produced approximately 2,000 pages of responsive materials,
23 including Plaintiff's prison health records.¹

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25
26 _____
27 ¹ In order to avoid the need for additional depositions and possible trial witnesses,
28 Defendants have agreed to provide an authenticating declaration from the custodian of
records for Plaintiff's prison medical file ("Unit Health Record"), and to stipulate to the
authenticity of those records for purposes of trial.

1 **II. EVENTS NECESSITATING ADDITIONAL TIME FOR FACT DISCOVERY**

2 **A. Plaintiff's Recent Lymphoma Diagnosis And Ongoing Chemotherapy**
2 **Treatments.**

3 Although the parties had originally scheduled Plaintiff's deposition for September
4 16, 2005, Plaintiff was diagnosed with a serious form of "B-type" lymphoma a few weeks
5 before his deposition. Since that time, Plaintiff has been receiving ongoing chemotherapy
6 treatments at a cancer treatment center in Eureka. It is difficult to reschedule Plaintiff's
7 deposition without disrupting his current treatment plan, and because his ability to testify on
8 any particular day is unpredictable due to the side effects of the chemotherapy treatments.
9 Accordingly, the parties need to postpone Plaintiff's deposition until his current round of
10 chemotherapy treatments ends, and counsel can be relatively certain that Plaintiff will be at
11 the prison and not sick on the date selected.

12 **B. The Pelican Bay Medical Staff's Decision To Perform A Sleep Study.**

13 Prison medical staff recently made arrangements for Plaintiff to undergo a sleep
14 study on December 12, 2005, to determine whether he has narcolepsy. The results of that
15 testing may help to resolve this litigation. Thus, the parties believe further fact discovery
16 should be postponed until the test results are available. In addition, Plaintiff has not had any
17 input on the selection of the sleep study provider, or the type of testing that will be
18 administered. Accordingly, the parties agree that Plaintiff should have an opportunity to
19 depose the doctor who oversees the sleep study and makes the diagnosis, if Plaintiff so
20 desires after reviewing the test results.

21 **C. Deposition of Dr. Samuel Ruben**

22 The parties had also scheduled the deposition of Dr. Ruben during the week of
23 September 12, 2005, but Dr. Ruben was unavailable because he was called up for National
24 Guard duty and sent to Louisiana to assist in Hurricane Katrina relief efforts. Although Dr.
25 Ruben has since returned, the parties believe his deposition should also be postponed
26 pending the results of Plaintiff's sleep study and the rescheduling of Plaintiff's deposition.

1 That would allow the parties to set both depositions for the same week in Crescent City.²

2 **D. ADR**

3 The parties may be willing to participate in mediation before a federal Magistrate
4 Judge following review of the sleep study results and completion of the discovery described
5 above.

6 December 6, 2005

Respectfully submitted,

7 HELLER EHRMAN LLP

8 By _____ /s/

9 AARON M. ARMSTRONG

10 Attorneys for Plaintiff

11 THOMAS FLOYD BRISSETTE, SR.

12 BILL LOCKYER, CALIFORNIA ATTORNEY
13 GENERAL

14 By _____ /s/

15 VIRGINIA I. PAPAN

16 Deputy Attorney General

17 Attorneys for Defendants

18 DWIGHT D. WINSLOW, M.D.,

19 and E. ALLEN, M.D.

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² Dr. Ruben is an important witness because Defendants allege that he was involved in the decision to discontinue Plaintiff's narcolepsy medication.

STIPULATION AND [PROPOSED] ORDER

For the foregoing reasons, the parties hereby stipulate as follows:

1. The fact discovery cut-off is extended to February 28, 2006.
2. The further case management conference currently set for December 20, is continued to a date to be determined by the Court in late-February 2006.

SO AGREED.

December 6, 2005

HELLER EHRLMAN LLP

By _____ /s/
AARON M. ARMSTRONG

Attorneys for Plaintiff BRISSETTE

December 6, 2005

BILL LOCKYER, CALIFORNIA ATTORNEY
GENERAL

By _____ /s/
VIRGINIA I. PAPAN
Deputy Attorney General

Attorneys for Defendants ALLEN and WINSLOW

PURSUANT TO STIPULATION, IT IS SO ORDERED.

The fact discovery cut-off is extended to February 28, 2006. The Subsequent Case Management Conference set for December 20, 2005, is continued to 2/28/06 AT 9:00 a.m..

DATED: December 13, 2005

